

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
WT Docket No. 99-168

In the Matter of

Service Rules for the 746-764 and  
776-794 MHz Bands, and  
Revisions to Part 27 of the  
Commission's Rules

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To: The Commission

**REPLY COMMENTS OF  
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

The Association for Maximum Service Television, Inc. ("MSTV"), urges the Commission to avoid the pitfalls of the proposals presented in a number of comments filed in this proceeding that would result in service and auction rules that limit the availability and suitability of spectrum in the 746-764 MHz and 776-794 MHz bands for many valuable uses. Particularly, the Commission should reject those proposals that would foreclose or deter broadcast and other broadband services from using these frequencies. Instead, in order to accomplish its goal of flexible use in this spectrum band, the Commission should adopt service and auction rules that will fully effectuate the purpose of the allocation by allowing both broadband and land mobile services a fair opportunity to use this spectrum. MSTV believes the best way to accomplish this goal is (1) to license a single 36 MHz block in each market and allow the licensee to sublease the spectrum to other users or, alternatively, (2) to auction the spectrum in unpaired 6 MHz blocks.<sup>1</sup>

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<sup>1</sup> The alternative of licensing the spectrum in 6 MHz, unpaired blocks also would prevent any bias against the provision of broadcast and broadband services in this spectrum. See Comments of MSTV at 8-10; Comments of Walt Disney Co. at 2-5. If the spectrum is channelized into 6 MHz blocks, the Commission must adopt interference criteria sufficiently stringent to protect the most incompatible adjacent operations from interference – *i.e.*, land mobile versus broadcast – and allow licensees to negotiate mutually-agreeable, less stringent criteria where their adjacent (continued...)

**I. TO ACHIEVE ITS GOAL OF FLEXIBLE USE, THE COMMISSION MUST PREVENT ANY DISCRIMINATION AGAINST BROADBAND OPERATIONS IN THE 746-764 MHz AND 776-794 MHz BANDS.**

The spectrum to be licensed in this proceeding presents a unique opportunity. For the first time in decades, the Commission will have available a relatively large bandwidth of spectrum – well-suited to accommodate a wide variety of wireless technologies – to allocate to new service providers on a relatively unencumbered basis.<sup>2</sup> This opportunity is especially important in light of the growing consumer demand for spectrum-based services. As the comments reveal, there are a number of potential applicants that want to offer a variety of competitive and innovative services in these frequencies. Foreseeing the wide range of services that might develop in these bands, the Commission concluded that flexible use of the spectrum would serve the public interest.<sup>3</sup> Now, in order to achieve its goals for this spectrum, the Commission must ensure that the service and auction rules it adopts do not promote two-way land mobile services at the expense of new broadband offerings and innovative broadcast services that also need spectrum in the 746-764 MHz and 776-794 MHz bands.

Many of the proposals set forth in the comments filed in this proceeding would derail the Commission's efforts to establish a fair and truly flexible allocation. Several commenters urged the Commission to reserve some or all of the available spectrum in the 746-764 MHz and 776-794 MHz bands especially for, and to channelize the spectrum to accommodate

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operations are compatible. In developing these criteria, the Commission should draw from existing sharing situations and update the criteria used in those situations to account for new developments in technology and other factors.

<sup>2</sup> Currently, there are approximately 100 full power digital and NTSC broadcast station assignments in the 746-764 MHz and 776-794 MHz bands, as well as some low power television stations and translators. These stations must transition out of this band by 2006, although that deadline may be extended in some circumstances.

<sup>3</sup> See *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd. 22,953, 22,961-62 (1998) ("*Reallocation Order*").

the particular needs of, two-way land mobile operations.<sup>4</sup> Yet these proposals are flatly contradictory to the Commission's goal of flexible use and would directly undercut the spectrum allocation policies established last year for these frequencies. Furthermore, many of the proposals set forth in the comments regarding channelization and license areas would discriminate against, if not outright prevent, the use of these frequencies by broadcasters. Again, this result conflicts with the Commission's allocation of this spectrum for multiple types of services, including cellular telephony, wireless local loop, industrial communications services, and video and multimedia applications (such as broadcast and wireless cable services).<sup>5</sup>

In order to ensure that broadband providers as well as land mobile users will have an opportunity to take advantage of this unique spectrum opportunity, the Commission should license all 36 MHz of spectrum to a single licensee in each market area or in unpaired 6 MHz spectrum blocks.<sup>6</sup> Each of these alternatives is discussed below.

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<sup>4</sup> See generally Comments of Airtouch Communications, Inc. (spectrum should be used to promote 3G mobile telephony, broadcasters should be excluded); Comments of ArrayComm, Inc. (spectrum should be licensed on paired basis to protect status quo); Comments of Industrial Telecomm. Ass'n (at least 12 MHz of spectrum should be allocated exclusively for private wireless services); Comments of Motorola (Commission should preclude broadcast use and allow only private mobile radio services in these bands); Comments of Rural Telecomms. Group (spectrum should be licensed in 9 MHz paired blocks to accommodate two-way mobile services, no broadcast use should be allowed); Comments of Southern Communications Servs. (18 MHz of spectrum should be allocated for specialized mobile radio services). The Consumer Electronics Manufacturers Association ("CEMA") goes even further, urging the Commission to allocate all 36 MHz of spectrum for one use. See Comments of CEMA at 3, 11 (Commission should license spectrum solely for the provision of a new mobile multimedia broadcast service).

<sup>5</sup> See *Reallocation Order* at 22,961-62.

<sup>6</sup> See Comments of MSTV at 8-10; Comments of Walt Disney at 2-5; Comments of KM Communications, Inc. at 2-3.

**A. MSTV's Proposal To License the Spectrum in a Single 36 MHz Block Will Increase the Spectrum Management of the 746-764 MHz and 776-794 MHz Bands, Thereby Ensuring that the Commission's Flexible Use Allocation Can Succeed.**

MSTV believes many of the “problems” regarding interference identified in the comments are straw men, designed to convince the Commission to allocate the spectrum only to a limited class of land mobile service providers.<sup>7</sup> MSTV’s proposal to license the 36 MHz of spectrum as a single license resolves the most difficult issue facing the Commission in this proceeding – how to establish workable interference criteria that will protect widely different services from adjacent and co-channel interference. Although MSTV believes that these problems can be effectively managed in a 6 MHz channelization scheme, the most straightforward solution to these interference problems would be to license all of the available spectrum in each market to a single high bidder, allowing each licensee either to use the available spectrum itself or to sublicense capacity to other service providers. In this way, the licensee can either ensure that the service providers on adjacent bands in a given market operate in a technically compatible manner or determine the level of interference each can accept, thereby increasing the level of certainty for bidders who will participate in the auction. This increased certainty will in turn increase potential auction revenues, assign the risk of interference to the licensees, and encourage the provision of both broadcast and land mobile services to promote the public interest.

By licensing the spectrum to a single high bidder, the Commission will give a single licensee the option to use all 36 MHz of the spectrum to provide a variety of service offerings to customers within its market area, or to act as a de facto band manager with respect to

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<sup>7</sup> Many of the parties who filed comments in this proceeding focused on the potential interference problems raised by broadcast and land mobile operations in the same spectrum. *See, e.g.*, Comments of Airtouch at 12-13; Comments of Motorola at 9-10.

any spectrum the licensee does not use itself. Some of the parties who filed comments in this proceeding support the use of a band manager for one particular class of service;<sup>8</sup> MSTV believes that, for this flexible use allocation to succeed, the role of band manager must be expanded to properly manage the potentially competing needs of broadcast and land mobile service providers that want to operate in these frequencies. Each licensee will have a direct stake in using the spectrum available in the most efficient manner possible, and these incentives will work to reduce regulatory burdens and costs for the Commission. By licensing the spectrum as a single, 36 MHz license, the Commission can continue to manage the spectrum allocation without resorting to complex and inefficient microregulation of the spectrum. This balance between band management and licensee discretion will allow market forces to determine which services are best suited for this spectrum, which interference problems can be resolved by licensee agreements, and where and how much interference can be accepted by a particular licensee without jeopardizing the quality and reliability of its service.

This proposal has the additional benefit of avoiding the imposition of a standardized, nationwide channelization plan that would discriminate against the use of the 746-764 MHz and 776-794 MHz bands for some types of services and that might run counter to the service needs of a particular community in a market. For example, a paired channelization plan could undermine the development of broadband services that require a single large channel or multiple contiguous channels in each market. Licensing the spectrum in narrow slices, as proposed by some parties,<sup>9</sup> may prevent the use of this spectrum for advanced broadband services

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<sup>8</sup> See, e.g., Comments of Industrial Telecommunications Ass'n, Inc. at 9-13; Comments of the Personal Communications Industry Ass'n at 5 (supporting concept of assignment to licensee who could "sub-lease the spectrum to others"); Comments of United Telecom Council at 3-4.

<sup>9</sup> See, e.g., Comments of American Mobile Telecomm. Ass'n at 8 (recommending that spectrum be assigned in .5 MHz blocks).

now and in the future. On the other hand, licensing the spectrum in broader, predetermined chunks, as proposed by several commenters,<sup>10</sup> might create spectrum inefficiencies for potential users who wish to offer only narrowband services or otherwise do not require a full channel. By licensing the spectrum in a single block, the Commission would allow the licensee to determine whether the spectrum should be divided or not, paired or not, channelized to a specific bandwidth, and put to any use consistent with the general allocation, creating a market-based and market-tailored solution and ensuring that the scarce spectrum resource is utilized in an efficient manner. Licensing the available spectrum in each market to a single high bidder would avoid the channelization and interference issues that the Commission otherwise faces in this proceeding, and would decrease uncertainty for potential licensees as to which type of service will be operating on adjacent channels, thereby increasing the value of this spectrum for potential applicants in the auction environment.

**B. If the Spectrum in the 746-764 MHz and 776-794 MHz Bands Is Divided into Multiple Licenses, Each Individual License Must Have Sufficient Bandwidth To Accommodate Broadcast Services.**

If the Commission concludes that a predetermined channelization plan would better serve the public interest, MSTV urges, as it did in its initial comments, that the Commission adopt a plan that would allow broadcast as well as land mobile users to operate in this band on a nondiscriminatory basis. Specifically, the Commission should license the spectrum in unpaired, 6 MHz blocks. This would encourage new and existing broadcasters, and particularly smaller broadcasters, to obtain licenses and launch innovative broadcast and other broadband services in

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<sup>10</sup> See, e.g., Comments of Airtouch at 16 (urging Commission to license the spectrum as two 18 MHz blocks, each of two 9 MHz paired channels); Comments of Rural Telecomm. Group at 8 (same); Comments of U S West, Inc. at 4 (supports nationwide 24 MHz license of two 12 MHz paired channels).

these frequency bands.<sup>11</sup> A 6 MHz block of spectrum would give potential broadband users sufficient bandwidth to provide a variety of innovative services and allow service providers to take advantage of the existing base of television receivers which are designed to receive a 6 MHz signal. Finally, the Commission should not require licensees in these frequency bands to acquire spectrum on a paired basis, because a paired channelization plan might undermine the development of broadband services that require a single larger channel or multiple contiguous channels in each market and discourage broadcast participation in the auction.

**II. THE COMMISSION'S SERVICE AND AUCTION RULES FOR THIS SPECTRUM MUST ACCOMMODATE BOTH BROADCAST AND LAND MOBILE USES IN A FAIR, NONDISCRIMINATORY MANNER.**

As MSTV explained in its initial comments, private and commercial two-way mobile services are not the only spectrum-based services to have experienced an increase in customer demand and, as a result, a corresponding need for new spectrum capacity. Broadcast services have also experienced an explosion in viewer demand in recent years, both for traditional video services as well as enhanced and two-way broadband services. Yet the biggest difficulty broadband service providers have faced is the fact that broadband requires more spectrum than many narrowband and two-way services. For that reason, the 746-764 MHz and 776-794 MHz allocation represents one of the last and best opportunities for broadband service providers to access valuable spectrum of sufficient bandwidth to accommodate new and developing broadband technologies in the next millennium. In fact, the spectrum allocated in this proceeding is in a

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<sup>11</sup> The 6 MHz licensing scheme would not address the interference issues as efficiently and flexibly as the proposal to license a single 36 MHz block of spectrum. Under the 6 MHz scheme, the Commission would be required to retain an active and ongoing role in managing the spectrum through the implementation of specific interference rules and the resolution of individual disputes. By contrast, the single license proposal would allow a private band manager to resolve these issues.

prime location both for the provision of land mobile and broadband services. By giving all potential operators a fair chance to participate in the auction for these spectrum bands and offer these new services, the Commission can encourage equipment manufacturers and service providers to roll out a variety of new technologies to best serve the public interest.


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For the reasons stated herein, MSTV urges the Commission to adopt service and auction rules that will give both broadcast and land mobile service providers a fair and nondiscriminatory opportunity to use the 746-764 MHz and 776-794 MHz bands to provide a variety of innovative services for the benefit of consumers and the public interest.

Respectfully Submitted,

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